

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TOI J' VHANN HORN,

Petitioner,

v.

CASE NO. 05-CV-72457-DT
HONORABLE LAWRENCE P. ZATKOFF

UNITED STATES,

Respondent.

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ORDER OF DISMISSAL

This matter is pending before the Court on petitioner Toi J'vhamn Horn's *pro se* application for the writ of habeas corpus under 28 U.S.C. § 2254. The habeas petition alleges that Petitioner pleaded guilty to wire fraud and was sentenced to eight to fourteen months in prison. The Court's records, however, indicate that Petitioner pleaded guilty in this District on May 16, 2005, and that he is scheduled to be sentenced by United States District Judge Marianne O. Battani on October 11, 2005. *See United States v. Horn*, No. 00-CR-90036-9 (E.D. Mich. May 16, 2005). Petitioner claims that he cannot appeal his conviction because his plea bargain prohibits an appeal.

Petitioner filed his habeas corpus petition on June 21, 2005. The grounds for relief allege that (1) Petitioner did not understand the charges and (2) his attorney and the prosecutor conspired to hold him against his will and cut off all communications to his proctors.

District courts may entertain applications for the writ of habeas corpus under 28 U.S.C. § 2254 if the petitioner is in custody pursuant to the judgment of a State court. 28 U.S.C. § 2254(a). Because Petitioner has been convicted of a federal crime and is not in custody pursuant to a state court judgment, the Court may not grant relief under § 2254. The availability of a motion to vacate

sentence under 28 U.S.C. § 2255 need not be considered, because it would be premature to seek to vacate a sentence not yet imposed. Accordingly, the application for writ of habeas corpus [Doc. #1, June 21, 2005] is dismissed without prejudice.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Date: July 20, 2005